

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
VONAGE HOLDINGS CORPORATION	)	WC DOCKET NO. 03-211
	)	
Petition for Declaratory Ruling	)	
Concerning an Order of the Minnesota	)	
Public Utilities Commission	)	

**Reply Comments of the Montana Telecommunications Association**

I. Introduction and Summary

Comments filed by the Montana Telecommunications Association (MTA) and others stressed the public interest significance of Vonage's petition to circumvent the obligations and responsibilities incumbent upon providers of telecommunications services. Vonage would prefer that its voice over IP (VOIP) service be classified as an information service, "unfettered" by such public interest obligations that other telecommunications service providers embrace. Yet, in *ex partes* filed by Vonage, Vonage appears to recognize it needs to comply with minimal public obligations, while at the same time continuing to seek treatment as something other than a telecommunications provider.

II. The Public Interest

911. The public interest obligations of telecommunications service providers were underscored most effectively by the National Association of State Utility Consumer Advocates (NASUCA). Regarding Vonage's assertion that it need not comply with 911 requirements, NASUCA correctly points out that, contrary to Vonage's statement,

Requiring E911 for VOIP does not conflict with Federal policy. Indeed, both State and Federal policies have found that consumers' health, welfare and safety during emergencies are essential and in the public interest.<sup>1</sup>

NASUCA points out that Vonage is capable of developing 911 solutions, but "apparently has not explored this option, because of its pretensions to information service provider status."<sup>2</sup>

*Interstate and Intrastate Traffic.* NASUCA also reveals the hollow nature of Vonage's claim that it somehow should be treated differently because it cannot distinguish between intrastate and interstate traffic that it carries over its VOIP service. (This is like saying, "If I can't comply with the rules, then the rules are to blame and I should not have to obey them.") NASUCA correctly notes that when

a business customer purchases a DS3 for transport and uses it for both interstate and intrastate traffic, the digital nature of the traffic makes it equally difficult to determine jurisdictions. However, this does not mean that an industry solution...could not be developed...<sup>3</sup>

In other words, Vonage again seeks a distinction without a difference.

*Access charges.* Again, NASUCA hits the nail on the head:

As more carriers migrate to VOIP, exemption from paying access charges will have a dramatic economic impact on ILECs, Competitive Local Exchange Carriers (CLECs) and consumers alike...To the extent that VOIP providers are able to avoid access charges, they are enjoying a free ride based on other carriers' investments.<sup>4</sup>

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<sup>1</sup> *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*. WC Docket No. 03-211. Comments of NASUCA, October 27, 2003. p. 12.

<sup>2</sup> *Id.* p.12. "...Vonage is asking the Commission to allow Vonage's business plan and information service pretensions to override the emergency service determinations of the states...[T]hose closest to the public—the states—have a clearer idea of the needs of their citizens than Vonage or this Commission."

<sup>3</sup> *Id.* p.13.

<sup>4</sup> *Id.* p.14. "[F]unds for capital improvement and expansion of the networks will be significantly reduced due to a VOIP exemption."

Further, NASUCA cites a Colorado Public Utilities Commission investigation of intercarrier compensation issues which found that some local rates could rise to as much as \$175 if interstate and intrastate access revenues were eliminated.<sup>5</sup>

*Universal service.* NASUCA further corroborated the comments of MTA and others in highlighting the negative consequences of avoiding universal service obligations. As more and more access revenues are transferred to universal service obligations, the effect is even more dramatic on network investment and service rates.

### III. Vonage *ex partes* Indicate Public Interest Obligations.

Vonage recognizes at least tacitly that it has public interest obligations. In *ex parte* meetings before the Commission, Vonage has attempted to downplay these obligations, however, effectively by stating, “don’t worry; be happy.”

On October 17, Vonage Chairman and CEO, Jeffrey Citron met with Commissioners and staff, and “clarified that Vonage’s Petition for Declaratory Ruling does not seek to address matters related to the Universal Service Fund or to intercarrier compensation...Vonage is not seeking to avoid contributions to the Universal Service Fund or avoid the payment of appropriate access charges.”<sup>6</sup> Yet, by claiming to be an “information service” provider and not a telecommunications service provider, Vonage is doing just that: seeking to avoid access and universal service obligations. As MTA noted in its initial comments, Vonage wants its cake and eat it too.

On October 31, Vonage attorneys Wilhelm and DelSesto again met with Commissioners and staff in an *ex parte* discussion of “CALEA and E911 concerns.” The attorneys explained that “Vonage believes its service *could, over time*, become CALEA compliant...With respect to E911, Vonage *is working* on a

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<sup>5</sup> *Id.* pp.14-15.

<sup>6</sup> William B. Wilhelm, Jr, and Ronald W. DelSesto, Jr. *Notice of ex parte Meeting in WC 03-211, CC Docket No. 96-45, 98-171 and 01-92.* October 20, 2003.

solution...[and] reiterated Vonage's desire to work with the FCC and the state commissions on public safety and law enforcement issues."<sup>7</sup> (Emphasis added.)

Meanwhile, Vonage is offering telecommunications services to the public without fully complying with CALEA, E911 or contributing appropriately to universal service or access mechanisms.

#### IV. Conclusion

Vonage cannot hold itself out, as it does, as a substitute for telephone services without also assuming the responsibilities and public obligations as a telecommunications service provider. Nor can the Commission condone separate treatment for functionally equivalent services. To do so not only would be discriminatory on the surface, but would create an entire market haven beyond the reach of laws and rules designed to protect the public interest.

Respectfully Submitted

/s/

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<sup>7</sup> William B. Wilhelm, Jr, and Ronald W. DelSesto, Jr. *Notice of ex parte Meeting in WC 03-211*. November 3, 2003